

## **REMARKS/ARGUMENTS**

### **Status of the Claims**

Upon entry of the present amendment, claims 1-30 are pending. Claims 1-6 and 11-24 are withdrawn as drawn to a non-elected invention. New claims 25-30 are added. Claim 7 is amended to correct a typographical error. Support for new claims 25-30 is found, for example, in paragraphs [0089] and [0093].

No new matter is added by the present amendments, and the Examiner is respectfully requested to enter them.

### **Response to Restriction Requirement**

In response to the restriction requirement, Applicants elect to prosecute the invention of Group II, claims 7-10, directed to a nucleic acid composition, with traverse.

Applicants traverse on the grounds that the claims do indeed share a common special technical feature that defines over the cited art. The Examiner has cited Krieg, *et al.*, *Nature* (1995) 374:548 ("Krieg") alleging that this reference discloses a pharmaceutical composition comprising an immune modulatory nucleic acid comprising a hexamer region of formula 5'-purine-pyrimidine-[X]-[Y]-pyrimidine-pyrimidine-3', wherein X and Y cannot be cytosine-guanine. The Examiner specifically refers to the oligonucleotides in Example 3M. *See*, page 3 of the present Office Action.

Applicants respectfully disagree with the Examiner. No hexamer motif within the oligonucleotides in Example 3M of Table 1 of Krieg discloses or suggests a hexamer region of formula 5'-purine-pyrimidine-[X]-[Y]-pyrimidine-pyrimidine-3', wherein X and Y cannot be cytosine-guanine. Furthermore, none of the oligonucleotides disclosed in Krieg are immune modulatory; instead they are *immunostimulatory* nucleic acid sequences. Therefore, Krieg does not disclose or suggest a pharmaceutical composition comprising an immune modulatory nucleic acid sequence comprising a hexamer region of formula 5'-purine-pyrimidine-[X]-[Y]-pyrimidine-pyrimidine-3', wherein X and Y cannot be cytosine-guanine.

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PATENT

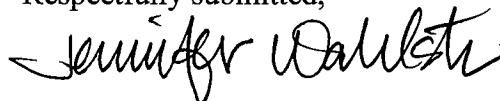
Because the claims of the present application share a common special technical feature that defines over the cited art, the requirements of PCT Rules 13.1 and 13.2 are met. Accordingly, the Examiner is respectfully requested to withdraw the present restriction requirement.

**CONCLUSION**

In view of the foregoing, Applicants believe all claims now pending in this Application are in condition for allowance. The issuance of a formal Notice of Allowance at an early date is respectfully requested.

If the Examiner believes a telephone conference would expedite prosecution of this application, please telephone the undersigned at 415-576-0200.

Respectfully submitted,



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